July 8, 1974

WA 2917
7-8-74
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TO V. L. Ljungren, Chief Engineer

FROM N. R. Akerman, Senior Engineer

SUBJECT Pier 91, Chempro Oil Spills
File No. P-90/91-100

On July 2, 1974 Keith Christian and I visited Pier 91 to discuss with Bud McGerr, Boiler Superintendent, the possibilities of a fuel oil spill and steps which should be taken in this eventuality. This visit was prompted by the Environmental Protection Agency Regulations on Oil Pollution Prevention which state that any facility which could conceivably have an oil discharge must have a "Spill Prevention Control and Countermeasure Plan". We found that there is little likelihood of a spill from the one tank and the piping used by the Port to supply the boilers and that there are means of handling it if it does happen. The procedures will be written up and posted in conformance with the regulations.

However, during our visit we toured the tank farm and pumphouse area and observed the results of Chempro's operation. The ground surrounding some of the tanks is saturated with water/oil sludge. The pipe alley has been flooded and the oily residue remains. Many of the stairs and walkways are slippery from spilled oil. Trucks are allowed to dump oil on the ground outside the tank farm walls. Although the product being handled is not highly flammable I consider the entire area to be extremely hazardous from a fire and safety standpoint. Oil has seeped out of the tank farm and into the storm sewer which leads directly to Elliott Bay, and this could cause a fine to be levied against the Port.

Although the responsibility for spills in the tank farm area lies with Chempro, it is feasible that the Port might be held liable for allowing a tenant to maintain the facility in such a potentially hazardous state. It is suggested that Marine Terminals be advised of our concern.

NRA:db NRA

cc: Messrs. Busler, Christian, Petit

July 24, 1974

V. L. Ljungren, Chief Engineer

Keith Christian, Environmental Affairs Specialist

PIER 91, CHEMPRO OIL SPILLS
FILE NO. P-90/91-100

This memo is supplemental to the July 8 memo to you from Ned Akerman, Senior Engineer, in which he described the condition of Chempro's operation. As is pointed out in that memo, saturation of the ground with oil has already resulted in seepage outside the tank farm wall on the east side. It would not be surprising if seepage eventually went directly into the waters of the bay.

A recent case, a description of which is attached, dealt with a similar situation. The Port's position is not the same as White Fuel Corporation, of course. The basic responsibility here is Chempro's. But, the Port ought to take what steps it can to see that the operation is cleaned up.

I sent a brief note on this to Jim Dwyer, Legal Officer. His informal response was that Marine Terminals should be notified of the problem and possibly Chempro also "since the liability would probably be theirs."

I second Ned Akerman's suggestion that Marine Terminals be advised of our concern. There should be operational requirements placed on Chempro through an amendment to the sub-license which would ensure a clean operation.

kc
57/07
Attach.

cc: Messrs: Yoshioka, Dwyer, Akerman

(Current Developments (
June 28, 1974, p. 248

Refuse Act Violation

The seepage into Boston harbor of oil owned by a fuel company constitutes a violation of the Refuse Act even if the Federal Government does not prove negligence or intent on the part of the company, according to a June 13 ruling of the U.S. Court of Appeals for the First Circuit (*U.S. v. White Fuel*, No. 73-1397).

White Fuel Corporation was charged with permitting oil to seep into the harbor from a deposit of oil that had accumulated under its tank farm. At the trial before the U.S. District Court for the District of Massachusetts, White Fuel acknowledged that it owned the oil, but it offered to present evidence that it had not known of the underground deposit and had acted diligently to clean up the oil when the deposit was discovered. The district court denied the firm's offer to present such evidence, ruled that the seepage was in violation of the Act, and imposed a $1,000 fine.

The appeals court, in an opinion by Judge Levin H. Campbell, affirmed the district court's ruling. No scienter or intent must be proven, Campbell said, since the Act has been interpreted to be a strict liability statute. It is immaterial, he said, that the discharge was an unwitting and indirect seepage rather than a direct flow into the harbor.

Campbell rejected White Fuel's contention that its due care or lack of negligence could be used as a defense to the prosecution. "We regret," Campbell said, "the existence of any generalized 'due care' defense that would allow a polluter to avoid conviction on the ground that he took precautions conforming to industry-wide or commonly accepted standards." Attempting to formulate such standards would cripple the Act's effectiveness as an enforcement tool, he said.

Campbell acknowledged that, although there is no generalized "due care" defense, a defendant may show that someone other than himself was responsible for the discharge. "One is not expected to take all conceivable measures to erect a fail-safe system," he said. Campbell ruled that in the present case, however, where it was shown that White Fuel owned the oil, that it had occupied the property continuously for years, and that the accumulation of the underground deposits was vast, any evidence that its personnel did not know of the existence of the oil was not sufficient to excuse it from liability.